



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-2852**

VIA ELECTRONIC MAIL – RETURN RECEIPT REQUESTED

Mr. Daniel G. Schuster
Daniel G. Schuster, Inc.
3717A Crondall Lane
Owings Mills, MD 21117
spalmer@schusterinc.com

Re: Notice of Potential Violation and Opportunity to Confer

Dear Mr. Schuster:

The U.S. Environmental Protection Agency (“EPA” or “Agency”) is issuing the enclosed Notice of Potential Violation and Opportunity to Confer (“NOPVOC”) to Daniel G. Schuster, Inc. (“Schuster Inc.”) under Section 113(a) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(a), for violations at its facilities located at 3625 East Monument St., Baltimore MD, 21205; 10782 Guilford Rd, Jessup, Maryland 20794; 15121 Southlawn Lane, Rockville, MD 20850; 530 East South St, Frederick, MD 21701; and 5501 Van Dusen Road, Laurel, MD 20707. Based on information available to the EPA, the Agency finds that Schuster Inc. is violating the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”), codified at 40 C.F.R. Part 63.

Section 113 of the Act, 42 U.S.C. § 7413, gives the EPA several enforcement options to resolve these violations. The EPA is offering Schuster Inc. the opportunity to request a conference, by email, to discuss the violations identified in the enclosed NOPVOC. Schuster Inc. should respond and request a conference within thirty (30) days following receipt of the NOPVOC. This conference will provide Schuster Inc. an opportunity to present information on the identified violations, any efforts taken to comply with the applicable regulations, and the steps Schuster Inc. will take to prevent future violations. Schuster Inc. may have legal counsel at this conference.

To request a conference with EPA and provide the Agency with information regarding the violations identified in the NOPVOC, please contact Stafford Stewart, the EPA contact in this matter at stewart.stafford@epa.gov or (215) 814-5352.

Alternatively, your counsel may contact Conner Kingsley, Assistant Regional Counsel, at kingsley.conner@epa.gov or (215) 814-2498.

Sincerely,

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA, Region III

Enclosure: Notice of Potential Violation and Opportunity to Confer

cc: Stafford Stewart, Inspector, stewart.stafford@epa.gov
Frank Courtright, Manager, MDE, frank.courtright@maryland.gov
Conner Kingsley, Assistant Regional Counsel, kingsley.conner@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
FOUR PENN CENTER – 1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PENNSYLVANIA 19103-2852**

IN THE MATTER OF:

**DANIEL G. SCHUSTER, INC.
3715 Crondall Lane,
Owings Mills, MD 21117,**

Respondent.

**NOTICE OF POTENTIAL VIOLATION AND
OPPORTUNITY TO CONFER**

**Proceeding under Section 113(a) of
the Clean Air Act**

NOTICE OF POTENTIAL VIOLATION AND OPPORTUNITY TO CONFER

The U.S. Environmental Protection Agency (“EPA”) is providing this Notice of Potential Violation and Opportunity to Confer (“NOPVOC”) under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a) (“the Act” or “CAA”), to inform Daniel G. Schuster Inc. (“Schuster Inc.”) of alleged violations set forth in detail in the paragraphs that follow.

Based on information currently available, the EPA alleges that Schuster Inc. is in violation of specific provisions of the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”), codified at 40 C.F.R. Part 63, at its facilities located at 3625 East Monument St., Baltimore MD, 21205 (“Monument Plant”); 10782 Guilford Rd, Jessup, Maryland 20794 (“Jessup Plant”); 15121 Southlawn Lane, Rockville, MD 20850 (“Rockville Plant”); 530 East South St, Frederick, MD 21701 (“Frederick Plant”); and 5501 Van Dusen Road, Laurel, MD 20707 (“Laurel Plant”) (known collectively as “the Facilities”).

I. STATUTORY AND REGULATORY BACKGROUND

1. The purpose of the CAA is to protect and enhance the quality of the nation’s air resources so as to promote the public health and welfare and the productive capacity of its population. CAA Section 101(b)(1), 42 U.S.C. § 7401(b)(1).

2. Section 112 of the CAA, 42 U.S.C. § 7412, establishes a list of hazardous air pollutants (“HAPs”) and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the Act, 42 U.S.C. § 7412(d), directs EPA to establish national emissions standards for hazardous air pollutants (“NESHAPs”) for sources in each category. NESHAPs established under the Act must require the maximum degree of reduction in emission of the HAPs, more commonly referred to as maximum available control technology (“MACT”).

NESHAP Subpart JJJJJ – Industrial, Commercial, and Institutional Boilers Area Sources

3. The EPA promulgated the General Provisions of the National Emission Standards for Hazardous Air Pollutants for Source Categories on March 16, 1994. *See* 59 Fed. Reg. 12,430. The General Provisions are codified at 40 C.F.R. §§ 63.1-63.16.
4. The EPA initially promulgated the NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources on March 21, 2011 (hereinafter “Subpart JJJJJ”). *See* 76 Fed. Reg. 15,554, codified at 40 C.F.R. §§ 63.11193 - 63.11237. Subsequent to litigation, EPA promulgated the final regulations for Subpart JJJJJ, effective September 14, 2016. *See* 81 Fed. Reg. 63,112.
5. 40 C.F.R. § 63.11193 states that Subpart JJJJJ applies, in part, to the owner or operator of an industrial, commercial, or institutional boiler as defined in 40 C.F.R. § 63.11237 that is located at, or is part of, an area source of HAPs, as defined in 40 C.F.R. § 63.2, except as specified in 40 C.F.R. § 63.11195.
6. A “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence. 40 C.F.R. § 63.2.
7. An “area source” means any stationary source of hazardous air pollutants that is not a major source as defined in this part. 40 C.F.R. § 63.2.
8. A “stationary source” means “any building, structure, facility, or installation which emits or may emit any air pollutant.” CAA § 111(a)(3).
9. An “affected source” is defined in the NESHAP regulations as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the “affected source,” as defined in this paragraph unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation

problems and why the different definition would resolve those problems. The term “affected source,” as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively. This definition of “affected source,” and the procedures for adopting an alternative definition of “affected source,” shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.” 40 C.F.R. § 63.2.

10. Subpart JJJJJJ also applies in relevant part, to the following affected sources: “the affected source of this subpart is the collection of all existing industrial, commercial, and institutional boilers within a subcategory, as listed in § 63.11200 and defined in § 63.11237, located at an area source.” 40 C.F.R. § 63.11194(a)(1).
11. Subpart JJJJJJ applies in relevant part, to the following affected sources: “each new or reconstructed industrial, commercial, or institutional boiler within a subcategory, as listed in § 63.11200 and as defined in § 63.11237, located at an area source.” 40 C.F.R. § 63.11194(a)(2).
12. An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before June 4, 2010. 40 C.F.R. § 63.11194(b)
13. An affected source is a new source if you commenced construction of the affected source after June 4, 2010, and the boiler meets the applicability criteria at the time you commence construction. 40 C.F.R. § 63.11194(c).
14. 40 C.F.R. § 63.11210(g) provides that for new or reconstructed affected boilers that have applicable work practice standards or management practices, you are not required to complete an initial performance tune-up, but you are required to complete the applicable biennial or 5-year tune-up as specified in § 63.11223 no later than 25 months or 61 months, respectively, after the initial startup of the new or reconstructed affected source.
15. 40 C.F.R. § 63.11223(a) provides that for affected sources subject to the work practice standard or the management practices of a tune-up, you must conduct a performance tune-up according to paragraph (b) of this section and keep records as required in § 63.11225(c) to demonstrate continuous compliance. You must conduct the tune-up while burning the type of fuel (or fuels in the case of boilers that routinely burn two types of fuels at the same time) that provided the majority of the heat input to the boiler over the 12 months prior to the tune-up.
16. 40 C.F.R. § 63.11223(b) provides that except as specified in paragraphs (c) through (f) of this section, you must conduct a tune-up of the boiler biennially to demonstrate continuous compliance as specified in paragraphs (b)(1) through (7) of this section.
17. 40 C.F.R. § 63.11223(e) provides that oil-fired boilers with a heat input capacity of equal to or less than 5 million Btu per hour must conduct a tune-up every 5 years as specified in

paragraphs (b)(1) through (7) of this section. Each 5-year tune-up must be conducted no more than 61 months after the previous tune-up. For a new or reconstructed oil-fired boiler with a heat input capacity of equal to or less than 5 million Btu per hour, the first 5-year tune-up must be no later than 61 months after the initial startup.

18. 40 C.F.R. § 63.11225(c)(1) provides that as required in § 63.10(b)(2)(xiv), you must keep a copy of each notification and report that you submitted to comply with this subpart and all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted.
19. 40 C.F.R. § 63.11225(d) then provides that your records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record on-site or be accessible from a central location by computer or other means that instantly provide access at the site for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years.
20. Specific standards in Subpart JJJJJ are described in detail in the NESHAP regulations at 40 C.F.R. §§ 63.11235 - 63.11237.

II. FACTUAL BACKGROUND

21. According to Schuster Inc.'s website (<https://www.schusterconcrete.com/about/>), Schuster Inc. was founded in 1985 with one small concrete batch plant in Owings Mills, Maryland. Schuster Inc. now owns eight stationary source concrete batch plants and a fleet of portable concrete plants in Maryland. The plants provide a variety of concrete mix designs, admixtures, reinforcement products, and concrete building supplies. Each load of concrete is custom made for clients. Schuster Inc. provides services to Maryland and nearby states.
22. Schuster Inc.'s corporate office is located at 3717A Crondall Lane, Owings Mills, Maryland 21117. Schuster Inc. is a Limited Liability Corporation incorporated in the state of Maryland and is a "person" as defined in the CAA. See 42 U.S.C. § 7602(e).
23. Schuster Inc. is the owner and operator of the facilities located at 3625 East Monument St., Baltimore MD, 21205; 10782 Guilford Rd, Jessup, Maryland 20794; 15121 Southlawn Lane, Rockville, MD 20850; 530 East South St, Frederick, MD 21701; and 5501 Van Dusen Road, Laurel, MD 20707. The Monument plant has two oil-fired boilers that burn distillate fuel oil ("oil fired boilers") with one installed in 2005 and one installed in 2007. The Jessup Plant has 2 oil-fired boilers; one was installed in 2005 and one was installed in 2009. The Rockville Plant has one oil-fired boiler which was installed in 2012. The Frederick Plant has one oil-fired boiler which was installed in 2005. The Laurel plant has one oil-fired boiler which was installed in 2004.
24. Pursuant to Section 114(a) of the CAA, 42 U.S.C. §7414(a), the EPA submitted an Information Request Letter ("IRL") on January 11, 2021.

25. Schuster Inc. responded with information regarding EPA's IRL on February 11, 2021 and March 11, 2021.

III. FINDINGS OF VIOLATIONS

COUNT 1

Failure to conduct tune-ups every 5 years per 40 C.F.R. § 63.11223(e)

26. According to Schuster Inc.'s IRL response and follow-up information, the Monument Facility has 2 oil-fired boilers, the Jessup Plant has 2 oil-fired boilers, the Rockville Plant has 1 oil-fired boiler, the Laurel Plant has 1 oil-fired boiler, and the Frederick Plant has 1 oil-fired boiler.
27. Pursuant to 40 C.F.R. § 63.11193 the facilities at Monument, Jessup, Rockville, Laurel, and Frederick plants are subject to Subpart JJJJJ because each facility has an industrial boiler that is located at, or is part of, an area source of HAPs.
28. Upon information and belief, the facilities at Monument, Jessup, Rockville, Laurel, and Frederick plants are area sources since they do not have the potential to emit more than 10 tons per year of any individual HAPs and less than 25 tons per year of any combination of HAPs, including but not limited to lead.
29. The oil-fired boilers at the Monument, Jessup, Rockville, Laurel, and Frederick facilities are subject to the tune-up requirement, as specified in 40 C.F.R. § 63.11223(b)(1) through (b)(7), which is required every 5 years per 40 C.F.R. § 63.11223(e). Construction commenced on all oil-fired boilers, except the Rockville plant oil-fired boiler, before 2010 and these oil-fired boilers are thus existing affected sources as defined by 40 C.F.R. § 63.11194. The Rockville plant oil-fired boiler is a new affected source as defined by 40 C.F.R. § 63.11194 because construction was commenced on the oil-fired boiler in 2012.
30. The oil-fired boilers at the Monument, Jessup, Rockville, Laurel, and Frederick plants burn distillate fuel oil and have the maximum rated heat input as follows:
- a. Monument: 1.4 million Btu per Hour & 2.7 million Btu per Hour.
 - b. Jessup: 2.7 million Btu per Hour & 2.7 million Btu per Hour.
 - c. Rockville: 2.7 million Btu per Hour.
 - d. Frederick: 1.4 million Btu per Hour.
 - e. Laurel: 2.1 million Btu per Hour.
31. Per 40 C.F.R. § 63.11223(e), the 5-year tune-ups for each of these boilers were supposed to be conducted at least once within the last five years for the Monument, Jessup, Rockville, Laurel, and Frederick boilers.
32. According to Schuster Inc.'s IRL response, the 5-year tune-ups were not performed during the last five years before receipt of the IRL (from 2017-2021) at the Monument, Jessup, Rockville, Laurel, and Frederick facilities.

33. Based on records provided by Schuster Inc. in its response to the EPA's IRL, Schuster Inc. did not conduct 5-year tune-ups for the oil-fired boilers at the Monument, Jessup, Rockville, Laurel, and Frederick plants as required by 40 C.F.R. § 63.11223(e).
34. Schuster Inc.'s failures to conduct the seven (7) 5-year tune-ups from 2017 to 2021 for the affected sources at the facilities as identified above constitute violations of 40 C.F.R. § 63.11223(e). Schuster Inc.'s failures to comply with 40 C.F.R. § 63.11223(e) are violations of Section 112 of the CAA.

COUNT 2

Failure to maintain required records of Compliance Status as required by 40 C.F.R. § 63.11225 (c) – (d) “What are my notification, reporting, and recordkeeping requirements?”

35. 40 C.F.R. § 63.11225 (c) “What are my notification, reporting, and recordkeeping requirements?” requires that affected sources keep certain records. 40 C.F.R. § 63.11225 (d) requires that your records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record on-site or be accessible from a central location by computer or other means that instantly provide access at the site for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years.
36. The boilers at the Monument, Jessup, Rockville, Laurel, and Frederick facilities are subject to Subpart JJJJJ at 40 C.F.R. § 63.11225 (c) – (d) as discussed above.
37. In response to the EPA's IRL, Schuster Inc. stated that it did not keep the records referenced in 40 C.F.R. § 63.11225 (c) – (d) from 2017 to 2021.
38. Schuster Inc.'s failures to keep these records constitutes a violation of 40 C.F.R. § 63.11225 (c) – (d).
39. Schuster Inc.'s failures to comply with 40 C.F.R. § 63.11225 (c) – (d) for the affected sources are violations of Section 112 of the CAA.

V. ENFORCEMENT PROVISIONS

40. Section 113(a) (3) of the CAA, 42 U.S.C. § 7413(a)(3), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement of prohibition the CAA or its regulations, the Administrator has several enforcement options to resolve these violations. Section 113(b) and (d) of the CAA, 42 U.S.C. § 7413(b) and (d) provide for civil judicial and administrative enforcement options including civil penalties.
41. The issuance of this NOPVOC does not in any way limit or preclude the EPA from pursuing additional enforcement options concerning inspections or review referenced in

this NOPVOC. This NOPVOC does not preclude enforcement action for violations not specifically addressed in this NOPVOC.

42. The EPA is extending Schuster Inc. an opportunity to advise the EPA, of any further information the EPA should consider with respect to the alleged violations. Please reply within thirty (30) calendar days following receipt of this letter to Stafford Steward, Inspector, at (215) 814-5352 or stewart.stafford@epa.gov. Or if you are represented by counsel, have your counsel reply to Conner Kingsley, Assistant Regional Counsel at (215) 814-2498 or kingsley.conner@epa.gov as to whether Schuster Inc. would like to schedule such a conference. The EPA may pursue enforcement options if there is no response to this NOPVOC.
43. EPA is enclosing an Information Sheet entitled “U.S. EPA Small Business Resources,” (EPA 300-F-20-002, February 2020), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with Federal and State environmental laws.

[digitally signed and dated]

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA, Region III